

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	No. 1: 05-cr-148
	)	<i>Judge Edgar</i>
	)	
FRANKLIN LAMAR KELLOGG	)	

**MEMORANDUM**

Defendant Kellogg has filed (Doc. No. 67) a motion for a new trial. Defendant was convicted by a jury of (1) Knowingly possessing a firearm as a convicted felon, 18 U.S.C. § 922(g)(1); (2) Possessing cocaine hydrochloride with the intent to distribute it, 21 U.S.C. § 841 (a)(1); and (3) Knowingly possessing a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A)(i).

Defendant asserts as error several evidentiary rulings made by the Court during the course of the trial. All of these asserted errors are hereby declared to be without merit for the reasons stated by the Court on the record during the trial.

Defendant also contends that the evidence does not warrant his conviction on all counts of the indictment. In deciding this issue the Court must determine whether the jury's verdict is against the manifest weight of the evidence. The Court under Fed. R. Crim P. 33 considers the credibility of the witnesses and the weight of the evidence to ensure that there is not a miscarriage of justice. *United States v. Solorio*, 337 F. 3d 580, 589 n.6 (6<sup>th</sup> Cir. 2003); *United States v. Lutz*, 154 F. 3d 581, 589 (6<sup>th</sup> Cir. 1998). In this case the verdict is fully supported by the evidence; and defendant's conviction is by no means a miscarriage of justice.

A separate order will enter DENYING defendant's motion for a new trial.

ENTER this the 12<sup>th</sup> day of February, 2007.

/s/ *R. Allan Edgar*  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE